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January 19, 2017

By Hand Delivery And ECFS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***AT&T Corp. v. Great Lakes Communications Corp., Docket No. 16-170, File No. EB-16-MD-001***

Dear Ms. Dortch:

AT&T Corp. ("AT&T") submits for filing the **Public Version** of its Supplemental Reply Brief in support of its Formal Complaint against defendant Great Lakes Communication Corp. Consistent with the Commission's rules and the June 2, 2016 Protective Order entered by the Commission Staff, AT&T has redacted all confidential and highly confidential information from the **Public Version**, which it is filing by hand and ECFS.

AT&T is also filing by hand with the Secretary's office hard copies of both the **Highly Confidential** and **Confidential Versions** of the submission. In addition, copies of all versions of the submission are being served electronically on GLCC's counsel. Electronic courtesy copies are also being provided to the Commission's Enforcement Bureau.

Please contact me if you have any questions regarding this matter.

Sincerely,



Michael J. Hunseder

Enclosures



Marlene H. Dortch

January 19, 2017

Page 2

cc: Joseph P. Bowser, Counsel for Defendant
G. David Carter, Counsel for Defendant
Lisa Griffin, FCC
Anthony DeLaurentis, FCC
Sandra Gray-Fields, FCC
Christopher Killion, FCC

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
AT&T CORP.

v.

GREAT LAKES COMM. CORP.

File No. EB-16-MD-001

SUPPLEMENTAL REPLY BRIEF OF AT&T CORP.

Pursuant to the parties' agreement and the Commission's December 13, 2016 email, Complainant AT&T Corp. ("AT&T") submits this supplemental reply brief in support of its Formal Complaint (the "Complaint") against Defendant Great Lakes Communication Corp. ("GLCC"), and in response to GLCC's Post-Discovery Brief ("Brief" or "GLCC Br.").

ARGUMENT

In its Brief, GLCC confirms that it has no valid defenses to AT&T's Complaint, and instead offers only empty rhetoric and unsound arguments that seek to distract from its repeated failures to comply with the Act and the Commission's rules.

Most notably, in its discussion of **AT&T's first interrogatory response**, GLCC ignores the Commission's unambiguous determination that a CLEC has a duty to "permit an IXC to install direct trunking from the IXC's point of presence to the [C]LEC's end office, thereby bypassing any tandem function." *PrairieWave*, 23 FCC Rcd. 2556, ¶ 27 (2008). On the facts here, GLCC unquestionably violated this duty. It did not permit AT&T to install direct trunks; instead, GLCC at first flatly refused to allow direct trunks, and then it insisted that AT&T pay a substantial fee, merely to obtain its consent to the installation of direct trunking. *See* AT&T Compl. ¶ 56; GLCC Exs. 2-8; Reply Decl. of J. Habiak ¶ 7; AT&T Exs. 103-1 to 103-6.

Because it has no defense, GLCC contends that the straightforward duty in *Prairiewave* is actually qualified, and that GLCC need not comply with this duty unless the IXC first shows, to GLCC's satisfaction, that the IXC can install the direct trunks. No such requirement exists.¹ GLCC cannot avoid its liability on Count I by arguing that AT&T failed to show it could effectuate a direct connection to GLCC's end office switch in Spencer.

Even assuming that there were any validity to such a defense, GLCC has not supported it. As part of its Answer, GLCC provided a declaration from its President, Josh Nelson, in which he stated that "[g]iven my experience in the industry, and with the networks of Northwest Iowa specifically, I would be surprised to learn that CenturyLink has had enough idle capacity to get all of AT&T's Great Lakes-bound traffic to Spencer." Nelson Decl. ¶ 21. That simply is not the case. The discovery shows that **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED] **[[END CONFIDENTIAL]]** AT&T Ex. 102-12. To move forward, however, GLCC needed to provide a letter of authorization ("LOA") for the connection of the CenturyLink trunks to GLCC's end office switch. *Id.* GLCC has never provided the LOA, in violation of *PrairieWave*.

In its brief, GLCC does not provide an updated declaration from Mr. Nelson, nor does it attempt to explain why it would not issue the requested LOA absent AT&T's payment of a

¹ Nothing in *PrairieWave* supports GLCC's position, which appears to be fabricated out of whole cloth. Simply put, AT&T wanted to purchase direct trunks (from CenturyLink or some other third party) and connect them to GLCC's end office switch. Rather than allow that connection – which has been its duty since at least 2008 – GLCC refused, and since then has erected a series of unreasonable and improper obstacles to this simple solution for avoiding high tandem transport rates.

substantial premium. GLCC instead submits a declaration from its purported expert,² and asserts that a “substantial investment” would have been needed to connect GLCC’s end office in Spencer with CenturyLink’s facilities, also located in Spencer.³ Neither GLCC nor Mr. Starkey attempts to quantify these investments or provide any detail as to the specific costs of such a facility. It is simply not credible to believe that the deployment of a three-mile link between the CenturyLink and GLCC facilities in Spencer would have prevented AT&T from establishing a direct connection, given the enormous savings [[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [[END

² In his declaration, Mr. Starkey admits that he has no first-hand knowledge regarding GLCC’s network or its costs. He instead relies entirely on a discussion he had with Mr. Nelson, which raises the question of why Mr. Nelson did not submit the affidavit. *See* Decl. of M. Starkey (“Starkey Decl.”), ¶ 10 nn.10 & 12, ¶ 12 n.15; *see also* Dep. of M. Starkey at 16:5-18 (indicating that he had not seen “any Great Lakes-specific documentation” regarding its network but had relied on Mr. Nelson), 123:10-16 (stating that he had not performed any study on the cost of providing a direct connection). Experts cannot serve as a mere vehicle to introduce otherwise incompetent evidence. *U.S. v. Mejia*, 545 F.3d 179, 197-98 (2d Cir. 2008) (experts cannot “merely repeat what [they have] read or heard . . . [because they] did not analyze the source material so much as repeat their contents”); *U.S. v. Adams*, 2014 WL 4312073, *17 (W.D. Va. 2014) (expert’s testimony excluded because “he simply would have recounted inadmissible statements”), *aff’d*, 638 F. App’x 189, 194 (4th Cir. 2016); *cf. AT&T Corp. v. Winback & Conserve Program, Inc.*, 16 FCC Rcd. 16074 ¶ 27 n.70 (2001) (refusing to credit defendant’s summary document because it was hearsay and lacked underlying data to support it).

³ GLCC Br. at 2; Starkey Decl. ¶¶ 4, 10. According to Google Maps, the CenturyLink office at 105 West 5th Street in Spencer is about 3 miles away from GLCC’s building in Spencer. *See* <https://goo.gl/maps/gY31oQmzosK2>.

⁴ In his declaration, Mr. Starkey asserts that AT&T’s discovery responses do not rebut his earlier showing that Mr. Habiak’s estimate of the savings associated with a direct connection was overstated. Starkey Decl. ¶ 5. Mr. Starkey, however, ignores Mr. Habiak’s responses to the two specific criticisms raised by Mr. Starkey in his original declaration. *See* Habiak Reply Decl. ¶¶ 20-21. Even more significantly, Mr. Starkey does not rebut (nor even address) Mr. Habiak’s testimony that, even if one were to take Mr. Starkey’s criticisms into account, the savings would still be significant. *Id.* ¶ 24.

CONFIDENTIAL]]

Further, there is no question that the parties involved have the technical expertise to deploy a short transport facility within Spencer, Iowa. GLCC advertises that it operates “carrier-class networks with *two* autonomous 10 Gig fiber paths” in that town,⁵ and the evidence shows that GLCC constructed at its own expense a high capacity fiber optic transmission facility between its end office in Spencer and the facility in Lake Park, Iowa where the conference and chat equipment is located – a distance of more than 25 miles. GLCC **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[[END HIGHLY CONFIDENTIAL]]

Finally, GLCC’s new claims regarding the significance of this short connection cannot be squared with **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[[END CONFIDENTIAL]] These claims, like

GLCC’s claim regarding AT&T’s ability to “bypass the FCC–approved Centralized Equal Access provider in Iowa (INS)” (GLCC Br. at 1), are bogus. It cannot be the law, as GLCC’s direct connection agreements seem to suggest, that GLCC can bypass INS’s network with impunity but that AT&T can only do so with GLCC’s permission.

⁵ See <http://www.glccom.com/network.html> (emphasis added).

⁶ See **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]
[[END HIGHLY CONFIDENTIAL]] Further, nothing in the record supports Mr. Starkey claims that GLCC would “presumably” bear the costs of this supposedly “substantial network connection.” Starkey Decl. ¶ 10. GLCC needed only to permit the connection of trunks that would be, in effect, built to its own front door.

GLCC's arguments on **AT&T's second interrogatory response** are likewise intended to distract from GLCC's misconduct. GLCC makes the inaccurate and irrelevant claim that AT&T did "next to nothing" to seek out alternative transport providers. GLCC Br. at 4. While AT&T did seek out such providers,⁷ it had no obligation to do so. Rather, the Commission's rules entitled AT&T to receive from GLCC a direct connection that was benchmarked against, and functionally equivalent to, CenturyLink's direct connect service. At the very least, AT&T should have been allowed to install direct trunks to GLCC's end office switch in Spencer. In short, if GLCC had complied with either of these obligations under the law, there would have been no need for AT&T to seek out alternative providers.


Finally, GLCC's discussion of **AT&T's response to GLCC's fourth interrogatory** again misses the point. Whether AT&T had **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** is irrelevant to the question of whether GLCC has complied with Commission rules that require it to provide or permit a direct connection to transport the large volumes of traffic that it stimulates. AT&T has shown that GLCC has failed to do so. Thus, whether AT&T would request a direct connection in other circumstances in other parts of the country has no effect on AT&T's right to relief as to GLCC in Iowa.⁸

⁷ See **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** Further, GLCC's direct connection agreements show that, even if AT&T had sought out additional alternatives, it would not have been able to obtain a direct connection, unless it was willing to pay a substantial and unreasonable premium. See generally Supp. Br. of AT&T Corp.

⁸ GLCC also appears to misconstrue AT&T's response. AT&T was not drawing a distinction between a "policy," a "protocol" or a "template." GLCC Br. at 6. Instead, it was simply noting that **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**

PUBLIC VERSION

Respectfully Submitted,


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Dated: January 19, 2017

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